

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

)	MDL No. 1456
IN RE PHARMACEUTICAL INDUSTRY)	Master File No. 01-12257-PBS
AVERAGE WHOLESALE PRICE LITIGATION)	
<hr/>)	Judge Patti B. Saris
)	
THIS DOCUMENT RELATES TO:)	
State of California, <i>ex rel.</i> Ven-A-Care v.)	
Abbott Laboratories, Inc., <i>et al.</i>)	
CASE #: 1:03-cv-11226-PBS)	
)	

STATE OF CALIFORNIA'S STATUS REPORT-MAY 1, 2006

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA (“CALIFORNIA”) hereby submits the attached Status Report to the Court in accordance with the Court’s June 17, 2004 Procedural Order.

Respectfully submitted,

BILL LOCKYER
Attorney General for the State of California

Dated: May 1, 2006

By: /s/ Brian V. Frankel
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MDL 1456 Status Report
State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories, Inc., *et al.*
Case No.: 1:03-cv-11226-PBS

First Amended Complaint in Intervention

Plaintiffs filed a First Amended Complaint in Intervention, with redacted exhibits, on August 25, 2005.

Motion to File Unredacted Exhibits Under Seal

On August 25, 2005, plaintiffs filed a motion for leave to file unredacted Exhibits under seal (Exhibits A-K and Exhibits M-R to the First Amended Complaint in Intervention). The Court granted the motion, and the unredacted Exhibits were filed under seal.

State of California's Election to Decline

On September 9, 2005, the State of California filed a motion for leave to file "State of California's Election to Decline as to Certain Defendants and Allegations" ("Election to Decline") under seal, which the Court granted on September 14, 2005. The Election to Decline was filed under seal on September 14, 2005.

Qui Tam Plaintiff's Notice of Election/Dismissal

On or about September 12, 2005, the *qui tam* plaintiff filed a motion for leave to file its "Notice of Election to Proceed and Notice of Dismissal" ("Notice of Election/Dismissal") under seal. The Court granted such motion, and the Notice of Election/Dismissal was filed under seal on September 14, 2005.

Case Management Order (CMO) 18

On December 13, 2005, the Court issued CMO 18, providing a briefing schedule for the served Defendants' motions to dismiss, as well as rules regarding the conduct of discovery and document access during the period required to brief and decide the motions to dismiss.

Motions to Dismiss

On January 17, 2006, the served Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. In addition, Abbott Laboratories Inc., B. Braun of America Inc. and ZLB Behring LLC filed individual Motions to Dismiss.

Plaintiffs filed their Oppositions to the joint and individual Motions to Dismiss on March 2. In addition, Plaintiffs filed their Objections to Defendants' request for judicial notice of the documents attached to their Motion to Dismiss. Served Defendants filed their joint and individual Replies on April 3, 2006, and Plaintiffs filed their Sur-Replies on April 17, 2006.

Hearing on initial Motions to Dismiss

On March 14, 2005 the Court set a Motion Hearing on Motions to Dismiss re: California ex rel Ven-a-Care case on May 22, 2006, at 3:00 p.m.

Additional Miscellaneous Filings

(1) On January 18, 2006, Plaintiff California filed a Motion to File under Seal its Ex Parte Application for a partial lifting of the seal. The Court granted that Motion on January 27, 2006, and granted the partial lifting of the seal on February 2, 2006.

(2) On January 27, 2006, Plaintiff California filed a Motion to File Under Seal a Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court granted the Motion to File the Stipulation Under Seal on February 16, 2006. The Court approved the Stipulation on February 17, 2006, but reduced the duration of the seal period.

(3) On March 16, 2006, the court granted a joint motion to stay response for Lipha, S.A. and Merck KGaA and ordered that a proposed scheduling order be submitted within 30 days. On April 11, 2006, certain Defendants and Plaintiffs jointly submitted a proposed CMO to the Court, which sets a proposed briefing schedule for the four foreign Defendants on whom service is either

in progress or has been recently effected.

(4) On April 28, 2006, Plaintiffs filed a Stipulated Motion for an Order Permitting the Deposition of Harvey Weintraub.

Anticipated Filings

California may file additional motions/pleadings, under seal when necessary, to dispose of the state's interests in matters remaining under seal. Plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed after the Court has adjudicated the served Defendants' joint and individual Motions to Dismiss. In addition, the Relator will file its Second Amended Complaint with respect to the remaining Defendants and claims that have not been dismissed and on which California has thus far declined to intervene.

CERTIFICATE OF SERVICE

I, Brian V. Frankel, hereby certify that on May 1, 2006, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S STATUS REPORT-MAY 1, 2006**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: May 1, 2006

/s/ Brian V. Frankel
BRIAN V. FRANKEL
Supervising Deputy Attorney General